

related:
1:23-cv-1116
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Jhen Scutella
Plaintiff

vs.

Trinity Food Services
Wexford Health Services
Deputy Warden Bryant
J. Evanovich
Michelle Earley
PA Kang
Dr Osuji Gibson
Nurse Ashley

Case No 1:23-cv-320

RECEIVED

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CLERK, U.S. DISTRICT COURT
FOR THE WESTERN DISTRICT
OF PENNSYLVANIA

I. JURISDICTION AND VENUE

1.) This Court has Jurisdiction over this action under 28 U.S.C. Sections 1331 and 1343(3) and (4). The matters in Controversy arise under 42 U.S.C. Section 1983

2.) Venue properly lies in this district pursuant to 28 U.S.C. Section 1391(b)(2) because the events giving rise to this cause of action occurred at Erie County Prison, 1618 Ash. St in Erie, Pennsylvania which is located in the western district of Pennsylvania

II. PARTIES

3.) Plaintiff, Jhen Scutella, is and was at all times relevant hereto a prisoner in the custody of the Erie County Prison. At the time of the events relevant hereto, Scutella was incarcerated at ECP.

4.) Trinity Food Services is a Privately Contracted Food provider acting under the color of state law

5.) Wexford Health Services is a Privately Contracted medical provider acting under the Color of State law

6.) Defendant Deputy Warden Bryant is an employee of the Erie County Prison acting under the color of State law.

7.) Defendant J. Evanovitch is an employee of Wexford Health Services as a Supervisor and has responses through the e-mail services with plaintiff.

8.) Defendant Michelle Earley is a Supervisor of Wexford Health Services who has a hand directly in this.

9.) Defendant PA Kang is employed through Wexford Health Services as a Physicians Assistant who is involved directly in this.

10.) Defendant Doctor Osuji Gibson is employed through Wexford Health Services as their Doctor and has been deliberately Indifferent to plaintiff's medical needs

11.) Defendant Nurse Ashley is an employee of Wexford Health Services who assisted PA Kang with medical decisions

III PREVIOUS LAWSUITS BY PLAINTIFF

12.) Plaintiff has filed in 2023, a lawsuit that is pending for Deliberate Indifference. Also, a lawsuit in 2019 against Wexford Health Services about a dental issue.

IV EXHAUSTION OF ADMINISTRATIVE REMEDIES

13.) On 10.21.2023 plaintiff asked for a grievance through the e-mail system about Wexford Health Services and Trinity Food Services. This message being acknowledged was never answered nor was I given a grievance in an attempt to circumvent the Constitution and to stop me from exhausting my remedies per PLRA.

V FACTS

14.) Plaintiff was incarcerated on 2.7.2023. Prior to incarceration plaintiff was diagnosed by his PCP Dr. Greizer as Insulin Resistant.

15.) After arrival, during Intake, plaintiff informed the Intake nurse of his status Insulin Resistant pre-diabetic and also informed her of the medications prescribed by Dr. Greizer.

16.) Plaintiff then signed a Release of Information for his medical records from his PCP.

17.) Medications plaintiff were taking was Fettermine, metformin, and a statin pill for high cholesterol. After Wexford received the medication list they took plaintiff off of Fettermine. The statin pill was changed. The metformin dosage was changed.

18.) After the course of 9 months Plaintiff has had multiple blood draws.

19.) Eventually being placed on multiple statin pills because of the side effects which plaintiff does believe was changed from his original prescription.

20.) Eventually Plaintiff was taken off the metformin because he was getting dizzy and light headed. Metformin Controls the Insulin production of my pancreas. Being taken off of this can cause adverse effects because of my Insulin Resistance. (Allegations can be verified through discovery From e-mail Correspondance and recorded Audio - video Conversations with medical staff.)

21.) Plaintiff avers that some dates and specifics may not be correct but can be verified during discovery because it was a ten month period of time

22.) At some point in March or April plaintiff complained about proper diet for his Insulin Resistant Status and that my Bowel movements have become watery, runny from the undercooked food, Inadequate Calorie Intake and malnutrition.

23.) Plaintiff was then placed on a stool examination for 7 days, which was embarrassing and unsanitary because we eat in the cell and the examination served no purpose, eventually being prescribed a Fiber Supplement

24.) Some time in April I requested a grievance about the Inadequacy of the Food on 4.26.2023 (Please take Note Exhibit A)

Exhibit A Grievance Number 3242 4.26.2023 Food Service

Grievance Note - plaintiff

"I've asked numerous times to be placed on a vegetarian diet. My medical status prior to coming to prison is Insulin Resistant. I seen my PCP regularly. Change of diet was most important as my cholesterol was high as well the food provided does not offer an Alternate protein beside meat, also I believe the trays and meals are under the proper Calorie Intakes that should be provided by law. Furthermore, no fruit is ever offered. I also asked

..medical to approve a vegetarian diet which was denied. My health is at risk and potential damage to my body if I am not fed properly. Furthermore, Food service by law should offer an alternative protein meal and should not have to be approved by medical or jail. Also, this should be deliberate indifference from medical for their failure to treat my Insulin Resistant Status."

Review officers note (Exhibit A Cont.)

"Mr. Scutella, you were told by your counselor to follow directions when filing this grievance. These directions are also clearly listed on the form itself. Please note #4 states "your grievance or appeal must be described in the area below; other forms of writing outside of the provided area will result in a dismissal". You wrote outside the provided area. Also note the grievance type that states "Choose only one" and you checked two (2) options. Note #9 states "Failure to Follow any instructions will result in dismissal of grievance." I suggest if you want to file this grievance, you ask for another form from your counselor and follow the instructions. This grievance is dismissed based on Failure to Follow instructions."

Review date: 4.27.2023 by Michael P. Holman

A.) When this form was returned to plaintiff, he asked Counselor Donato for an Appeal Form, which was denied, he then asked for a new Grievance Form which was also denied. (Also shown is Actual Grievance Form, Exhibit B, it speaks for itself)

25.) Trinity Food Services does not allow the option for an alternate protein tray or any fruit. Trays are consistently undercooked or overcooked. Meals are never warm, cooked hours prior to being consumed. It's unsanitary, trays come with remnants of breakfast and prior meals still on them. Also, specifically, Plaintiff's vegetarian trays were made days in advance then placed in fridge. (Photos were taken of all diet trays).

26.) After denial of grievance, plaintiff desperately tried to have diet changed. He then proceeded to pursue a new religion, Rastafarian, which mandates the diet to coincide with the proper nutrition of unprocessed foods with the Nutritional value that is needed, but was denied multiple times (Verification can be provided on e-mail Correspondence, during discovery)

27.) Over the course of 9 months bloodwork was drawn almost monthly for Full panels or Lipid panels eventually leading to a medically Approved diet. Seven (7) different blood draws with all abnormal Flags and that were never properly treated. (Please take Note Exhibit 1 thru 7 Lab results) Which eventually Wexford defendants recommended a medically Approved diet.

28.) After being taken off the metformin and the medically approved diet, plaintiff began gaining weight back. 11 pounds in 60 days (Review exhibit 1-7).

29.) Plaintiff then asked Trinity Services Supervisor J. Evanovitch for fruit which was denied because trays are apparently pre-made. They offer no fruit.

30.) Plaintiff then brought his concerns to Wexford that his body did not feel normal and has gained 11 pounds within 60 days and that the Food Trinity was serving was inadequate, improper calorie intake, undercooked, overcooked, and there's no fresh fruit. Furthermore, plaintiff found out that trays were made days in advance of just rice and beans, vegetables, which was just reheated. On one documented occasion, plaintiff bit into a rock in the beans, which was documented by medical staff and Trinity. (Plaintiff also found out that photographs were being taken of all his meals, which during discovery, will show that trays were inadequate).

31.) Also, all conversations with Wexford health officials were recorded to verify said facts. (Body Cam Footage)

32.) Around August, plaintiff was 205 lbs. By October plaintiff was 216 lbs. gaining 11 pounds within two months. The only thing that changed was plaintiff's medically approved diet.

33.) Plaintiff avers that the changes in medicine and the inadequate meals being provided are the cause of the irregularities in blood work and the 11 pound weight gain.

34.) Then on October 21st, 2023 plaintiff asked for another grievance from Counselor Martin, whom is also a defendant in another lawsuit. Initially no response was given for a week. Then Michelle Earley from Wexford emailed me to tell me they were going to contact my PCP for further directions on how to care for me. This is completely ridiculous when I, plaintiff, have been in the care of Wexford Health, which clearly shows deliberate indifference and negligence by not giving proper care or treatment and "dumping" off on my PCP.

35.) Then on October 30th, 2023 I was called into the counselor's office for a recorded meeting. It was between Michelle Earley (Wexford Health), Deputy Warden Bryant, and Captain Carman. The plaintiff and Michelle Earley discussed what transpired between the PCP and Wexford Health Services. My PCP avoided contact and did not forward a plan of treatment obviously because plaintiff is not in his care. Also, around the same time a rock was found in my beans which was documented by the Erie County Prison and Wexford Health Services.

36.) Defendant Earley then discussed a course of action of working with Trinity Food Services to change diet and to test thyroid which was already previously tested. During these conversations, Deputy Warden Bryant intervened with the course of treatment in an Aggressive and threatening manner. He was deliberately Indifferent to my serious medical needs by stating that if I did not restrict my commissary then I was not ready for treatment. Bryant said I needed to make a decision now if I'm serious about my health. I then asked DW Bryant if he knew what Insulin Resistant was which he replied no. I then asked who he worked for the Erie County Prison?, which he replied yes. I then said to him that he should not have a say or do anything that is medically related.

37.) Defendants attempted to state that commissary was reason for weight gain, but I consistently ordered commissary the entire stay and lost the weight down to 20's till med and diet change but legitimately did not eat any trays but solely survived off of vegetables and plain rice that I bought from the commissary. Defendants have caused a very substantial weight gain and who knows what other type of Cardiovascular damage and I am predisposed to Heartattack (Father and Grandfather but they had bypass surgery). Wexford's course of treatment is to change diet which they have no control over what food I receive, essentially passing the blame onto Trinity Food Services. Then testing the same blood they have tested over 7 times, which is deliberately Indifferent to my medical needs. Furthermore, Trinity is deliberately Indifferent to my health and medical needs. They do not serve me a diet consistent to my diagnosis. They serve no fruit under and overcooked nutritionally Inadequate Food.

VI LEGAL CLAIMS 4th and 14th Amendment Deliberate Indifference

38.) Wexford Health Services, Michelle Earley, PA Kang, Nurse Ashley, Doctor DJURBE-Gibson defendants have ignored obvious conditions, failed to provide treatment for diagnosed conditions, plaintiff was diagnosed Insulin Resistant and merely continued treatment which eventually became ineffective, then when finally approved for medical diet they ignored obvious conditions of weight gain and abnormal lipid panels. Then Wexford attempted to dump off medical treatment to plaintiff's PCP in an attempt to delay treatment until possible release. Lastly defendants based their decisions off less costly factors rather than treat the diagnosis. Furthermore, these defendants also violated state law claims of medical negligence and medical malpractice. Recently, plaintiff was tested for TSH resulting in a 3.87 up from 3.13 in 60 days.

4th and 14th Amendment, 8th Amendment Cruel and Unusual Punishment

39.) Trinity Food Services and J. Evanovitch prepared food for the Erie County Prison. Defendants were deliberately indifferent to plaintiff and plaintiff's medically approved diet. They ignored obvious conditions. They made medical decisions based off non medical factors. It was cheaper to feed plaintiff unhealthy food, then to give proper nutritional food and failing to provide treatment for diagnosis. Defendants did not offer any fruit and very rarely offered a low sodium diet. Furthermore, when brought to their attention, defendants stated they were pre-made trays and couldn't offer any fruit but correctional officials must provide adequate nutrition under the 8th Amendment. Furthermore, plaintiff is a pre-trial detainee and may not be punished at all prior to an adjudication of guilt. Nutritionally adequate food that is prepared and served under conditions which do not present immediate danger to their health and well being. Defendants consistently served nutritionally inadequate food

against the constitution and medicals recommendation of a medically approved diet. All plaintiffs trays were photographed after being medically approved for diet. During discovery plaintiff can prove all claims. They are also, deliberately indifferent by not providing a diet for Insulin Resistant diagnosis.

40.) Deputy Warden Bryant was deliberately Indifferent to plaintiffs serious medical needs. On 10.30.2023 plaintiff had a recorded meeting where D.W. Bryant intervened with a medical treatment discussion between Michelle Earley and I (plaintiff). He is a non-medical personnel who, after being questioned by plaintiff, did not even know what Insulin resistant meant

Pendant state law claims

Intentional Infliction of emotional distress

Medical malpractice

medical Negligence

III PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully pray that this court enter
Judgement:

41.) Granting Plaintiff Scutella a declaration that the acts and omissions described herein violate his rights under the Constitution and laws of the United States, and

42.) A preliminary and permanent injunction ordering defendants to treat medical conditions and trinity to serve nutritionally adequate meal with fruit, conducive to medical diagnosis

43.) Granting plaintiff Scutella compensatory damages in the amount of \$100,000

against each defendant, jointly and severally.

44.) Plaintiff Scutella seeks compensatory damages in the amount of \$200,000 against Defendant Deputy Warden Bryant only.

45.) Plaintiff seeks nominal damages and punitive damages in the amount of \$400,000 against each defendant, jointly and severally.

46.) Plaintiff also seeks a jury trial on all issues triable by jury.

47.) Plaintiff also seeks recovery of their costs in this suit, and

Any additional relief this court deems just, proper, and equitable

Dated: 11.11.2023

Respectfully Submitted, Jhen Scutella

21382

Erie County Prison,

1618 Ash Street

Erie, PA 16503

VERIFICATION

I have read the foregoing complaint and hereby verify that the matters alleged therein are true, except as to matters alleged on information and belief, and, as to those, I believe them to be true. I certify under penalty of perjury that the foregoing is true and correct.

Executed at Erie, Pennsylvania on November 11th, 2023

Jhen Scutella

Jhen Scutella